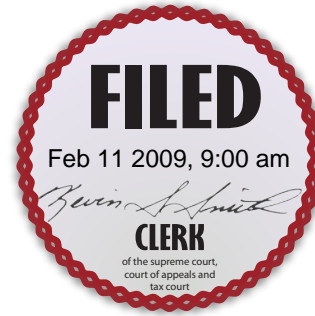


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

EMI DEVINE,)	
)	
Appellant-Respondent,)	
)	
vs.)	No. 45A05-0806-CV-343
)	
RALPH DEVINE,)	
)	
Appellee-Petitioner.)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Elizabeth Tavitas, Judge
The Honorable Nanette Raduenz, Magistrate
Cause No. 45D03-0711-DR-1208

February 11, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Emi Devine (“Emi”), pro se,¹ appeals the trial court’s order dissolving her marriage to Ralph Devine (“Ralph”).

We affirm.²

ISSUE

Whether the trial court lacked jurisdiction over the dissolution.

FACTS

Emi and Ralph were married on October 3, 1993. They moved to San Pierre in Starke County in 2004. In November of 2006, the then-forty-five-year-old Ralph was diagnosed with a malignant brain tumor. The tumor caused severe physical and mental impairments, eventually rendering Ralph “an incapacitated person under Indiana law.” (App. 30).

On November 16, 2007, Ralph filed a petition for dissolution in Lake Superior Court. Emi filed a motion for change of venue from Lake County to Starke County, asserting that Ralph was “not a resident of Lake County.” (App. 25). The trial court dismissed this motion by agreement of the parties. On January 11, 2008, Emi, by counsel, filed a motion to dismiss. She argued that Ralph did not meet the residency requirement for dissolution under Indiana Code section 31-15-2-6(b).

¹ We note that Emi’s brief fails to comply with Indiana Appellate Rule 46(A)(4)-(8). Furthermore, her appendix fails to comply fully with Appellate Rule 50(A). “It is well settled that pro se litigants are held to the same standard as are licensed lawyers.” *Goossens v. Goossens*, 829 N.E.2d 36, 43 (Ind. Ct. App. 2005).

² We note that Devine has typed on the cover of her brief that oral argument is requested. She, however, has not filed a motion for oral argument. *See* Ind. Appellate Rule 52. We decline to set this matter for oral argument.

The trial court held a hearing on Emi's motion on February 6, 2008. Emi testified that Ralph lived with her in San Pierre except for a short period from March through May of 2007, when he stayed in Lake County with his brother and sister-in-law, Daniel and Crystal Devine. According to Emi, Ralph stayed in Lake County during that time period because "he had just had major brain surgery"; his brother's home "was closer to the hospital"; and Ralph was receiving physical therapy from a hospital in Lake County. (Tr. 42). She testified that Ralph returned to San Pierre at "the end of May" when his physical therapy ceased. (Tr. 44). On October 27, 2007, however, she and Ralph got into an argument, which ended with Ralph leaving the marital home. Subsequently, Ralph resided with Daniel and Crystal. Emi further testified that Ralph continued to receive mail at their address in Starke County; Ralph's mail had not been forwarded through the post office; Ralph's vehicle was registered in Starke County; and Ralph's personal belongings remained at the marital residence.

The trial court admitted copies of mail received in Starke County "for the limited purpose of showing that mail is still being received for Ralph Devine . . . in San Pierre, Indiana." (Tr. 10). The trial court also admitted into evidence a copy of an ambulance transport report, indicating that Ralph had been at the marital residence on August 5, 2007.

Crystal testified that Ralph came to live with her and Daniel on December 28, 2006, and resided there as of the date of the hearing. She also testified that Ralph had visited Emi "[o]n an occasional weekend for one, maybe 2 nights." (Tr. 23). According to Crystal, Ralph returned to Starke County "about every other weekend and then it

stopped” in August of 2007. (Tr. 23-24). She further testified that Ralph was living with her and Daniel when they went to Emi’s residence on October 27, 2007, to retrieve Ralph’s car. Ralph did not testify.³

Finding there to be “sufficient evidence that Mr. Devine was living in Lake County at least 3 months prior to the filing of his petition for dissolution,” the trial court denied Emi’s motion to dismiss. (Tr. 52). On May 20, 2008, the trial court held a final hearing on the dissolution; Emi, however, failed to appear.⁴ The trial court therefore entered a default decree of dissolution on June 3, 2008.

DECISION

Emi asserts that Ralph did not meet the residency requirements for dissolution and therefore, the trial court lacked jurisdiction over the dissolution. Specifically, she contends that Ralph had not resided in Lake County for the three months prior to his filing the petition for dissolution.⁵

Indiana Code section 31-15-2-6(b) provides that at the time of the filing of a petition for dissolution, at least one of the parties must have been a resident of the county

³ Daniel and Crystal were appointed as temporary co-guardians over Ralph and his estate on or about March 13, 2008. On or about April 17, 2008, the probate court appointed Daniel and Crystal as permanent guardians of Ralph and his estate.

⁴ Emi’s counsel had withdrawn his representation at some point after the hearing on the motion to dismiss.

⁵ Emi also asserts that the trial court lacked jurisdiction because Ralph “was mentally incapacitated and was incapable of making legal and logical decisions which require a ‘sound mind’.” Emi’s Br. at 2. Emi did not raise this issue before the trial court. It is therefore waived. *See GKC Indiana Theatres, Inc. v. Elk Retail Investors, LLC*, 764 N.E.2d 647, 651 (Ind. Ct. App. 2002) (Generally, “a party may not present an argument or issue to an appellate court unless the party raised that argument or issue to the trial court.”); *Van Winkle v. Nash*, 761 N.E.2d 856, 859 (Ind. Ct. App. 2002) (holding that failure to raise an issue before the trial court will result in waiver of that issue).

“where the petition is filed for three (3) months immediately preceding the filing of the petition.” For purposes of Indiana Code section 31-15-2-6, a person’s “residence” is synonymous with “domicile,” “which has been defined as the ‘place where a person has his true, fixed, permanent home and principal establishment, and to which place he has, whenever he is absent, the intention of returning.’” *Skiles v. Skiles*, 646 N.E.2d 353, 355 (Ind. Ct. App. 1995) (quoting *Person v. Person*, 563 N.E.2d 161, 163 (Ind. Ct. App. 1990), *trans. denied*), *trans. denied*. “The issue of domicile is a contextual determination made by the trial court upon a consideration of the individual facts on a case-by-case basis.” *Skiles*, 646 N.E.2d at 355.

Where the residency requirement is not met and there is an objection, “the trial court may not exercise its jurisdiction over that particular case.” *Kondamuri v. Kondamuri*, 799 N.E.2d 1153, 1158 (Ind. Ct. App. 2003), *trans. denied*.

A court’s jurisdiction either exists or does not, and the question of a court’s jurisdiction is therefore a question of law that is not entrusted to the trial court’s discretion but rather is reviewed de novo. To the extent that the existence of jurisdiction must be determined on the basis of disputed facts, the trial court’s determination of jurisdictional facts is reviewed for clear error.

Id. at 1156. Thus, we will consider only the evidence favorable to the judgment and all reasonable inferences to be drawn therefrom. *Horseman v. Keller*, 841 N.E.2d 164, 169 (Ind. 2006). We will not reweigh the evidence or judge the credibility of witnesses. *Liddy v. Liddy*, 881 N.E.2d 62, 66 (Ind. Ct. App. 2008), *trans. denied*.

Crystal testified that while Ralph did visit Emi occasionally, he had been residing in Lake County since December 28, 2006. She further testified that Ralph ceased even

the occasional visit to the marital home in August of 2007. Considering this evidence, we cannot say that the trial court committed clear error in determining that Ralph had satisfied the residency requirement under Indiana Code section 31-15-2-6(b). Although Emi presented conflicting evidence during the hearing, it is within the trial court's purview to assess the credibility of the witnesses, and we will not reweigh the evidence.

See id.

Affirmed.

RILEY, J., and VAIDIK, J., concur.